



City of Santa Barbara
Police Department

Memorandum

DATE: May 12, 2011

TO: Fire and Police Commission

FROM: Holly Perea, Police Technician

SUBJECT: Solomon Tesfamichael - Appeal of Denial of Taxi Driver Permit Renewal Application

On March 17, 2011, Solomon Tesfamichael submitted a Renewal Application for a taxicab driver permit to the Santa Barbara Police Department. A review of the applicant's driving record revealed that Mr. Tesfamichael was convicted of four moving violations in 2009:

- Convicted on April 17, 2009 for a December 2008 violation of 22356(B) VC, exceeding maximum speed limits;
- Convicted on April 17, 2009 for a March 2009 violation of 21453(B) VC, illegal movement at a red light or arrow;
- Convicted on July 20, 2009 for an April 17, 2009 violation of 21750 VC, illegal passing; and
- Convicted on November 6, 2009 for an August 2009 violation of 22450(A) VC, failure to stop at stop sign.

(See Attachment 1)

Based on this discovery, Mr. Tesfamichael's renewal permit application was denied per **Santa Barbara Municipal Code (SBMC) §5.29.190 Denial** "A public vehicle driver's permit shall not be issued to any person for whom any of the following is applicable: **(I)** Has... three (3) or more moving violation convictions within one (1) year, or four (4) moving violation convictions within 2 years for renewal." It should be noted that the above section does not use the discretionary term "may not be issued," but instead states that a "permit shall not be issued," thereby requiring the Chief of Police to deny the permit under the above-listed circumstances. (See Attachment 2.)

Mr. Tesfamichael was given written notice of this denial in person on March 29, 2011. On April 5, 2011, attorney Neil Levinson, on behalf of Solomon Tesfamichael, filed a letter of appeal with the City Clerk's office per the requirements of **SBMC §5.29.250 Appeal Procedure**.

Per **SBMC §5.29.250(A)**:

3. Upon filing an appeal, the party to the action shall be entitled to a hearing by the Board of Fire and Police Commissioners at the next regular meeting.
4. The appellant or appellant's representative shall have the right to present his or her case in person.

5. The Board of Fire and Police Commissioners shall consider the case record as well as any statements offered by interested parties. The hearing will be conducted according to administrative rules relating to evidence and witnesses as adopted by the Commission.
6. If the Board of Fire and Police Commissioners refuse to issue, amend or restore a license or an owner's permit, the party to the action or such party's agent shall not file a new application within three hundred sixty five (365) days from the date of final action by the Board of Fire and Police Commissioners.
(See Attachment 3: SBMC Section 5.29.250.)

Mr. Tesfamichael's attorney, Neil Levinson, notified the Board of Fire and Police Commissioners in advance that, due to a scheduling conflict, he would be unable to attend the next regularly-scheduled Commission meeting on April 28, 2011. Therefore, on that date, the Board voted to hold a special meeting to hear Mr. Tesfamichael's appeal.

RECOMMENDATION:

That the Fire and Police Commission uphold the Police Department's decision to deny the renewal of Mr. Rafik's taxicab driver permit.

(ATTACHMENT 1)

V C Section 22356 Increase of Freeway Speed Limit to 70 Miles Per Hour

Increase of Freeway Speed Limit to 70 Miles Per Hour

22356. (a) Whenever the Department of Transportation, after consultation with the Department of the California Highway Patrol, determines upon the basis of an engineering and traffic survey on existing highway segments, or upon the basis of appropriate design standards and projected traffic volumes in the case of newly constructed highway segments, that a speed greater than 65 miles per hour would facilitate the orderly movement of vehicular traffic and would be reasonable and safe upon any state highway, or portion thereof, that is otherwise subject to a maximum speed limit of 65 miles per hour, the Department of Transportation, with the approval of the Department of the California Highway Patrol, may declare a higher maximum speed of 70 miles per hour for vehicles not subject to Section 22406, and shall cause appropriate signs to be erected giving notice thereof. The Department of Transportation shall only make a determination under this section that is fully consistent with, and in full compliance with, federal law.

(b) No person shall drive a vehicle upon that highway at a speed greater than 70 miles per hour, as posted.

V C Section 21453 Circular Red or Red Arrow

Circular Red or Red Arrow

21453. (a) A driver facing a steady circular red signal alone shall stop at a marked limit line, but if none, before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection, and shall remain stopped until an indication to proceed is shown, except as provided in subdivision (b).

(b) Except when a sign is in place prohibiting a turn, a driver, after stopping as required by subdivision (a), facing a steady circular red signal, may turn right, or turn left from a one-way street onto a one-way street. A driver making that turn shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to any vehicle that has approached or is approaching so closely as to constitute an immediate hazard to the driver, and shall continue to yield the right-of-way to that vehicle until the driver can proceed with reasonable safety.

V C Section 21750 Overtake and Pass to Left

Overtake and Pass to Left

21750. The driver of a vehicle overtaking another vehicle or a bicycle proceeding in the same direction shall pass to the left at a safe distance without interfering with the safe operation of the overtaken vehicle or bicycle, subject to the limitations and exceptions hereinafter stated.

V C Section 22450 Stop Requirements

Stop Requirements

22450. (a) The driver of any vehicle approaching a stop sign at the entrance to, or within, an intersection shall stop at a limit line, if marked, otherwise before entering the crosswalk on the near side of the intersection.

If there is no limit line or crosswalk, the driver shall stop at the entrance to the intersecting roadway.

(ATTACHMENT 2)

5.29.190 Denial.

A public vehicle driver's permit shall not be issued to any person for whom any of the following is applicable:

- A. Has been a licensed driver for less than 6 months in the United States.
- B. Does not possess a valid Class C driver's license issued by the State of California.
- C. Is less than twenty-one (21) years of age, unless the applicant possesses a valid Class B driver's license issued by the State of California and is 18 years or older.
- D. Is currently required to register pursuant to Section 290 of the California Penal Code or is required to register in another state or country as a sex offender in a manner comparable to Penal Code Section 290.
- E. Has been convicted of a crime involving moral turpitude, narcotics or dangerous drugs, unless a period of not less than three (3) years shall have elapsed since the date of conviction or the date of release from confinement for such offense, whichever is later.
- F. Has been convicted for driving a vehicle recklessly within the two (2) years immediately preceding application for a permit or renewal.
- G. Has been convicted of operating a vehicle while under the influence of alcohol or drugs two (2) or more times within seven (7) years immediately preceding the application for a permit or a renewal application, or one (1) time within one (1) year immediately preceding application for a permit or renewal.
- H. Has a history of chronic alcohol-related criminal convictions, as evidenced by three (3) or more public intoxication convictions within two (2) years immediately preceding an application for or renewal of permit.
- I. Has two (2) or more moving violation convictions within one (1) year immediately preceding an application for a permit, or three (3) moving violation convictions within one (1) year, or four (4) moving violation convictions within two (2) years for renewal. "Moving violation" conviction shall mean those violations set forth in State Vehicle Code Section 12810.
- J. Has been convicted of a felony or misdemeanor hit and run.
- K. Has falsified or omitted material and relevant facts on the public vehicle driver's permit application.
- L. Has failed to comply with all applicable provisions of Section 5.29.175 of this Chapter. (Ord. 5360, 2005; Ord. 4974, 1996; Ord. 4277, 1984; Ord. 4206, 1983.)

(ATTACHMENT 3)

5.29.250 Appeal Procedure.

A. Appeals to the Board of Fire and Police Commissioners

1. Any decision of the Chief of Police denying a permit, or denying an amendment to a permit, or imposing a suspension or revocation of any owner's or driver's permit shall not become final until fifteen (15) days after the date of transmittal of the written notice to the person affected by such decision, during which period the party to the action may appeal the decision in the manner provided herein at any time prior to the expiration date of the fifteen (15) day period. If no appeal is taken before the expiration of the fifteen (15) day period, the decision of the Chief of Police shall be final.

2. The appeal of any decision shall be in writing signed by the party to the action briefly setting forth the reasons why such decision is not proper, stating an address at which the appellant will receive notices, and filed with the Clerk of the City.

3. Upon filing an appeal, the party to the action shall be entitled to a hearing by the Board of Fire and Police Commissioners at the next regular meeting.

4. The appellant or appellant's representative shall have the right to present his or her case in person.

5. The Board of Fire and Police Commissioners shall consider the case record as well as any statements offered by interested parties. The hearing will be conducted according to administrative rules relating to evidence and witnesses as adopted by the Commission.

6. If the Board of Fire and Police Commissioners refuses to issue, amend or restore a license or an owner's permit, the party to the action or such party's agent shall not file a new application within three hundred sixty five (365) days from the date of final action by the Board of Fire and Police Commissioners.

7. If the Board of Fire and Police Commissioners suspends an owner's permit or a license, the Chief of Police shall determine a period of suspension of not more than thirty (30) days, which is in accordance with the schedule of penalties developed by the Chief of Police.

8. If the Board of Fire and Police Commissioners' action is to grant or restore a certificate or a license, the Commission shall direct the Chief of Police to issue or restore the certificate or license.

B. Appeals to the City Council

1. Appeals to the City Council from the decision of the Board of Fire and Police Commissioners shall be made pursuant to the provisions of Section 1.30.050 of this Code. (Ord. 5360, 2005; Ord. 5136, 1999; Ord. 4206, 1983.)